

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alpert Analyst: LuAnna Hass Bill Number: SB 1009

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: May 12, 2003

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Use Tax Administration/Collection By Franchise Tax Board

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 22, 2003.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 22, 2003, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would require the Franchise Tax Board (FTB) to collect certain use tax.

## SUMMARY OF AMENDMENTS

The May 12, 2003, amendments resolved several, but not all, of the implementation, policy, and technical concerns as discussed in the department's analysis of the bill as amended April 22, 2003. Specifically, the amendments would:

- Expand the scope of this bill to allow persons, as defined under current sales and use tax law, to elect to report and remit qualified use tax on an "acceptable tax return," which would allow individuals, partnerships, limited liability companies, and corporations to make the election.
- Define "acceptable tax return" as an original timely filed return under the personal income tax laws (PITL), corporation tax laws (CTL), and the provisions of the administration of franchise and income tax laws (AFITL) relating to returns of partnerships and limited liability companies.
- Provide that the election under this bill would not apply to those taxpayers that are required to have a seller's permit or be registered with the State Board of Equalization (BOE).
- Allow a taxpayer that has use tax liability of \$400 or less for a calendar year to pay qualified use tax with an acceptable return.
- Provide that qualified use tax would be considered timely reported for purposes of the sales and use tax laws if the tax is timely reported and remitted on an acceptable tax return.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Jana Howard for Brian Putler 5/16/03

- Remove the language providing that penalties and interest would apply to qualified use tax in the same amounts and manner as the penalties and interest apply to PIT. Instead, penalties and interest would apply and be administered by BOE as provided under current sales and use tax laws.
- Clarify that FTB and BOE would enter into an agreement regarding the reimbursement of FTB's administrative costs to implement this bill.
- Clarify the language regarding the application of payments to provide that a payment sent with the return would be applied to any income or corporation tax liability, including any unpaid liabilities for previous tax years, first, and then to any qualified use tax.
- Clarify the operative date to allow taxpayers to report and remit qualified use tax for purchases made during calendar years beginning on or after January 1, 2004, in taxable years beginning on or after January 1, 2004. This would allow taxpayers to report and remit the qualified use tax on the 2004 returns filed beginning January 1, 2005.

As a result of the May 12<sup>th</sup> amendments, the department has identified an additional implementation concern. For convenience all new and existing concerns and an updated fiscal estimate are provided below. The remainder of the department's analysis of the bill as amended April 22, 2003, still applies.

## **EFFECTIVE/OPERATIVE DATE**

This bill would be effective January 1, 2004. This bill would be operative for purchases of tangible personal property made on and after January 1, 2004, in taxable years beginning on or after January 1, 2004, and ending on or before December 31, 2009.

## **POSITION**

Pending.

## **IMPLEMENTATION CONSIDERATIONS**

Department staff has identified the following implementation considerations for purposes of a high-level discussion. Additional concerns may be identified as the bill moves through the legislative process. In order for FTB to implement this bill, clarification is needed for the following issues, and department staff is available to work with the author's office to resolve these and other concerns that may be identified:

### **Existing Concerns:**

- Under the current tax forms design schedule, the design, printing, and distribution of forms and booklets take place in the fall of the actual taxable year. For example, the design of the 2004 returns would begin June 2004, printing would begin October 2004, and distribution of the returns and booklets would begin at the end of 2004. This allows taxpayers to begin reporting and paying their 2004 taxes in January 2005.

The author has expressed an intent that this bill be operative January 1, 2003, and allow taxpayers to report and remit use tax on the 2003 tax returns, which are filed in 2004. However, depending on when this bill might be enacted during the 2003 session, it is uncertain if the department would have sufficient time to design the forms accordingly. In addition, this bill would require BOE to approve the revision to the tax forms to include the use tax. Such an approval process could delay an already tight forms design schedule for the 2003 forms.

- Under this bill, an election to report qualified use tax on the tax return would be an irrevocable election. Department staff suggests clarifying the term “irrevocable election.” Would the election by the taxpayer be irrevocable for that particular return, those particular purchases, or subsequent taxable year returns? Would the election by the taxpayer prohibit the taxpayer from electing to submit use tax to BOE as allowed under current law?
- This bill requires FTB to remit the qualified use tax within 60 days of the receipt of the tax. Assuming the taxpayer self-assesses the use tax on the PIT return, FTB receives PIT returns and payments daily from January through April 15<sup>th</sup> or, with an extension, October 15<sup>th</sup>. It is suggested that the author clarify the remittance language to specify how often FTB should remit the taxes. However, absent clarification and in order to ease administration for FTB, the department would likely remit the funds weekly or monthly, which would have a minor impact on current fiscal operations.

New Concern:

- This bill would specify that payments included with a tax return would be applied to taxes in a specific order. However, this language does not specify the payment priority when the tax return results in a refund due to the taxpayer. Amendments 1 and 2 are provided to clarify that any payment or credit on the return, combined with any other credit on the taxpayer's account, would be applied to any income or corporation liability and then to the use tax reported on the return.

**FISCAL IMPACT**

This bill would require a calculation for the sales and use tax that would require significant changes to the tax forms, personal income tax systems, and business entities tax systems. Preliminary cost estimates range from \$1.8 million to \$2.0 million for implementation and from \$500,000 to \$550,000 for on-going costs. These costs include costs resulting from changes to the tax forms, instructions, and booklets, processing hours, programming, testing, and maintaining departmental systems, and the development and negotiation of a data exchange with BOE for the sales and use tax remittance.

The May 12, 2003, amendments specify that BOE would enter into an agreement with FTB to provide for reimbursement for the expenses incurred by FTB to implement and administer this proposal. However, if BOE were unable to reimburse FTB for the implementation costs incurred, then a deficiency request would be required. Absent a direct appropriation for FTB or approval of a deficiency by the Department of Finance for 2003/2004 or BCP for the 2004/2005 fiscal year, the department would be required to redirect staff from other revenue generating activities of the department, such as collections administration or audit, to administer this bill.

Since the bill does not specify which tax forms FTB should revise, the department developed the above costing for those tax returns estimated to have the greatest impact on the use tax election. At this time, the department does not anticipate revising the personal income tax forms for non-residents/part-year residents or water's edge corporations and the above costing does not include the costs to revise the corresponding tax forms. However, if the author or BOE believes that these taxpayer groups should be included, the department could update the above costing accordingly to include those tax forms.

## **ECONOMIC IMPACT**

This bill would have no identifiable revenue impact under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL). Collection of sales and use tax revenue is a function of BOE, which has both the data and expertise in this area. Accordingly, FTB staff defers the revenue estimate for this bill to BOE.

## **ARGUMENTS/POLICY CONCERNS**

The author has expressed an intent that this bill be operative for purchases on or after January 1, 2003, in taxable years beginning on or after that date, and to allow taxpayers to report and remit use tax on the 2003 income tax return, which is filed in 2004. Depending on when this bill may be enacted this year, taxpayers may not have been keeping adequate records or receipts of purchases during 2003 that are subject to the use tax and could be reported on the returns for 2003.

Current laws regarding the non-tax debts administered by FTB provide for a reimbursement to FTB of costs to administer the programs. The laws are usually specific to the amount of reimbursement available to FTB or require an agreement between agencies outlining reimbursement. Although through an agreement the reimbursement could be based on a percentage of collections, concern has arisen when the department contracts for a percentage of collection to cover costs because the possibility exists that the percentage may not cover the costs of the program in any given year and monies from the General Fund may be needed to cover any difference.

Under this bill, administrative functions regarding the use tax would be divided. FTB would collect use tax reported on the returns processed by FTB and transfer the money to BOE. However, BOE would retain responsibilities for auditing, collecting, and processing claims for refund of the use tax. The author may wish to ensure that BOE systems are able to accept the additional taxpayer data that FTB would provide regarding the taxpayer and the use tax data. In addition, the separation of functions may cause confusion for the taxpayer.

## **LEGISLATIVE STAFF CONTACT**

LuAnna Hass  
Franchise Tax Board  
845-7478  
[LuAnna.Hass@ftb.ca.gov](mailto:LuAnna.Hass@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
845-6333  
[Brian.Putler@ftb.ca.gov](mailto:Brian.Putler@ftb.ca.gov)

Analyst	LuAnna Hass
Telephone #	845-7478
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SB 1009  
As Amended May 12, 2003

AMENDMENT 1

On page 5, line 8, strikeout "Any payment by a person" and insert:

Any payments and credits shown on the return, together with any other credits associated with the taxpayer's account, of a person

AMENDMENT 2

On page 8, strikeout line 7 and insert:

Any payments and credits shown on the return, together with any other credits associated with the taxpayer's account, of a person